

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16830 of 2003

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

MAKWANA VARSHABEN NATVARLAL

Versus

NORTH GUJARAT UNIVERSITY

Appearance:

MR CL SONI for Petitioner No. 1

MR MITUL K SHELAT for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 18/12/2004

ORAL JUDGEMENT

1. The petitioner has by of this petition prayed to declare the amendment in Ordinance 117 at annexure-C and further direct the respondent University to give equal treatment to the petitioner and other persons belonging to SC/ST community by giving the benefit of four marks as grace so as to reach and attain 55% marks.

2. The short facts of the case as they emerge from the record of the petition are that the petitioner belongs to S.C. community. It is the case of the petitioner that since he was declared passed in the said

LL.M. examination, the respondent University had issued combined marksheet on 27th June, 2002, for LL.M. Part I & II showing to have secured IInd class. The petitioner further submitted that being dissatisfied with the result, she on 2nd July, 2002 applied for reassessment in the subjects of General Principles of Law of Contract and Specific Torts in the prescribed form. The petitioner further submitted that after about a period of 9 months, she was issued new marksheet by adding two marks in the total marks.

2.1. It is case of the petitioner that due to shortfall of two marks, she was not able to fulfill her desire to become lecturer or professor. The petitioner submitted that the respondent University has amended Ordinance 117, whereby a candidate whose total falls short of the requisite total for 55% of marks by not more than 4 marks in the final year of the postgraduate examination shall be awarded as grace upto 4 marks in the aggregate of the principal subject to the extent of enabling him to just attain 55% marks.

2.2. The petitioner further submitted that now so far as the UGC criteria for appointment is concerned, provisions for relaxation of 5% is made in case of persons belonging to SC/ST category, meaning thereby, for appointment in any institution or University, a relaxation of 5% was provided from 55% to 50% of the marks to the master's level for SC/ST category.

2.3. The petitioner further submitted that a person who has short of 4 marks to make the total of 55% marks is not given the benefit of 4 marks as grace. The petitioner contended that the respondent University by making amendment in Ordinance has acted arbitrarily by giving grace marks to only those persons belonging to general category and have excluded person belonging to SC/ST category. Hence, this petition.

3. Mr. Soni learned advocate for the petitioner contended that in view of the amendment in Ordinance, if grace marks is given to the general category to attain 55% marks, the same treatment should also be given to the persons belonging to S.C./S.T. category. He further contended that due to short fall of 2 marks, the petitioner was not able to apply for appointment to the post of teacher.

3.1. As against that Mr. Shelat learned advocate for the respondents submitted that pursuant to the recommendation of the academic council, the said

Ordinance has been cancelled by the Executive Council. Mr. Shelat further submitted that in view of the cancellation of the Ordinance, the respondent University cannot consider the case of the petitioner.

3.2. In view of that Mr. Shelat has relied upon the decision of the Apex Court in the case of Maharashtra State Board of Secondary & Higher Secondary Education v. Amit & Anr., reported in (2002) 6 S.C.C. p. 153, wherein the Court has held as under :-

"However, a rule for the award of grace marks must be construed strictly so as to ensure that the minimum standards are not allowed to be diluted beyond the limit specifically laid down by the appropriate authority. It is only in a case where the language of the statute is absolutely clear that the claim for the award of grace marks can be sustained. Normally, the Court shall be slow to extend the concession of grace marks and grant a benefit where none is intended to be given by the appropriate authority."

3.3. Mr. Shelat has next relied upon the decisions of this Court in the case of Dineshkumar Mohanlal Gajjar v. State of Gujarat & Anr., reported in 1996 (3) [XXXVII (3)] G.L.R. p.130 and in the case of Goradia Kamlesh Haribhai v. The Union of India & Anr., reported in 1987 (I) G.L.H. p.456.

4. I have heard the learned advocates of the respective parties and have perused the relevant record. In view of the ratio laid down by the Apex Court in the case of Maharashtra State Board of Secondary & Higher Secondary Education v. Amit & Anr., (supra) and in view of the statutory provision more particularly, Ordinance 117, if there is no provision to give grace marks, this Court cannot exercise extra ordinary jurisdiction under Article 226 of the Constitution of India to direct the respondent University to give relaxation in the academic standard. Moreover, as consistently held by this Court, the High Court shall not interfere under Article 226 of the Constitution of India for deciding academic matters and the same should be left to the expert body.

5. In the premises aforesaid, the petition is rejected. Rule is discharged with no order as to costs.

[K.S. JHAVERI, J.]
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